

ORIGINAL

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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FINANCE DOCKET NO. 35293



PINSLY RAILROAD COMPANY  
-- CONTROL EXEMPTION --  
WARREN & SALINE RIVER RAILROAD COMPANY

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SURFACE  
TRANSPORTATION BOARD

**PETITION FOR EXEMPTION OF  
PINSLY RAILROAD COMPANY**

**ENTERED**  
Office of Proceedings  
SEP - 9 2009  
Part of  
Public Record

**EXPEDITED CONSIDERATION REQUESTED**

**FILED**  
SEP - 9 2009  
SURFACE  
TRANSPORTATION BOARD

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**ATTORNEYS FOR  
PINSLY RAILROAD COMPANY**

Dated: September 8, 2009

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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FINANCE DOCKET NO. 35293

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-- CONTROL EXEMPTION --  
WARREN & SALINE RIVER RAILROAD COMPANY

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**PETITION FOR EXEMPTION OF  
PINSLY RAILROAD COMPANY**

Pursuant to 49 U.S.C. § 10502 and the regulations of the Surface Transportation Board (the "Board") at 49 C.F.R. § 1121, Pinsly Railroad Company ("Pinsly"), a non-carrier, submits this petition for an exemption from the prior review and approval requirements of 49 U.S.C. § 11323(a)(5) for Pinsly to acquire control of Warren & Saline River Railroad Company ("WSR"), a Class III rail carrier, through the purchase of all of WSR's stock from Potlatch Land & Lumber, LLC ("Potlatch"). Pinsly currently controls five other Class III rail carriers, one of which -- Arkansas Midland Railroad Company, Inc. ("AKMD") -- operates a rail line that connects with WSR. But for that connection, Pinsly's proposed control of WSR would qualify for the class exemption provided in 49 C.F.R. § 1180.2(d)(2). As demonstrated further below, individual exemption of the proposed transaction clearly is warranted under the relevant standards of Section 10502.

Pinsly is filing simultaneously herewith a notice of exemption pursuant to 49 C.F.R. § 1180.2(d)(2) to acquire control of another Class III rail carrier currently controlled by Potlatch. Finance Docket No. 35292, Pinsly Railroad Company -- Control Exemption -- The Prescott and Northwestern Railroad Company. Pinsly seeks expedited consideration of this petition, so that Pinsly's acquisition of both Potlatch carriers may occur concurrently by year end.

A map showing the rail line of WSR and other rail lines in the vicinity is attached hereto as Exhibit A. In support of this Petition for Exemption, Pinsly submits the following:

**I. BACKGROUND**

**A. Identification of Parties**

Petitioner Pinsly is a non-carrier holding company which currently controls through stock ownership five Class III rail carriers: AKMD, which operates several disconnected line segments in Arkansas; Pioneer Valley Railroad Company, Inc., which operates rail lines in Massachusetts; and Florida Central Railroad Company, Inc., Florida Midland Railroad Company, Inc. and Florida Northern Railroad Company, Inc., each of which operates rail lines in Florida. See Pinsly Railroad Company -- Continuance in Control Exemption -- Arkansas Midland Railroad Company, Inc., Finance Docket No. 32001 (ICC served March 6, 1992).

The complete name and address of petitioner Pinsly is:

Pinsly Railroad Company  
53 Southampton Road  
Westfield, Massachusetts 01085  
(413) 568-6426

WSR is a Class III rail carrier which owns and operates approximately 5 route miles of rail line extending south and west from Warren, Arkansas. See generally Warren and Saline River Railroad Company -- Abandonment Exemption -- In Bradley County, AR, Docket No. AB-430 (Sub-No. 1X) (ICC served November 21, 1994); Warren, Johnsville & Saline River R.R. Co., 119 I.C.C. 68 (1926). WSR is a wholly-owned subsidiary of Potlatch, see Potlatch Land & Lumber, LLC -- Change of Control Within Corporate Family Exemption, Finance

Docket No. 35199 (STB served November 26, 2008), and is historically associated with the forest products industry. Potlatch is the only active shipper on WSR.<sup>1</sup>

WSR connects at Warren with a rail line leased and operated by AKMD. See Arkansas Midland Railroad Company, Inc. -- Change in Operators Exemption -- Line of Union Pacific Railroad Company, Finance Docket No. 34567 (STB served November 17, 2004). AKMD serves as WSR's sole link to the remainder of the national rail system. WSR and AKMD do not serve any common industries at Warren.

**B. The Proposed Transaction**

Pursuant to a Stock Purchase Agreement executed by Pinsly and Potlatch, Pinsly proposes to acquire control of WSR through the purchase from Potlatch of all of the issued and outstanding shares of common stock of WSR. Following consummation of the transaction, rail operations on WSR will be closely coordinated with those of AKMD, and service will continue to be provided five days per week as traffic warrants. Pinsly and AKMD will provide administrative and other support for WSR's operations.

No shipper will lose rail service or any existing competitive options as a result of the proposed control transaction. All WSR traffic currently moves over AKMD's rail line out of Warren, and will continue to do so after Pinsly assumes control of WSR and WSR and AKMD become affiliated carriers.<sup>2</sup> Potlatch, which currently owns WSR and is the railroad's only active

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<sup>1</sup> A second, much smaller shipper is currently inactive. Pinsly notes that there are no solid waste rail transfer facilities located on WSR. See Consolidated Appropriations Act, 2008, Pub. L. No. 110-161, Division K, § 193, 121 Stat. 1844, 2408 (2007); Consolidated Appropriations Act, 2008 -- Solid Waste Rail Transfer Facilities, Ex Parte No. 675 (STB served January 16, 2008).

<sup>2</sup> The Stock Purchase Agreement neither prohibits WSR from nor penalizes WSR for interchanging traffic with a railroad not owned or controlled by Pinsly. Cf. 49 C.F.R. § 1121.3(d); Disclosure of Rail Interchange Commitments, Ex Parte No. 575 (Sub-No. 1) (STB served May 29, 2008). As noted, however, WSR connects solely with AKMD.

shipper, selected Pinsly to acquire WSR and strongly supports the proposed transaction. See Exhibit B hereto.

## **II. JURISDICTION AND STATUTORY STANDARDS**

Pursuant to 49 U.S.C. § 11323(a)(5), acquisition of control of a rail carrier by a person that is not a rail carrier but that controls any number of rail carriers requires prior approval by the Board. Because Pinsly's proposed control of WSR does not involve two or more Class I railroads, the Board would be required to approve the transaction unless: 1) the transaction was likely to result in a substantial lessening of competition; and 2) the anticompetitive effects of the transaction outweighed the public interest in meeting significant transportation needs. 49 U.S.C. § 11324(d).

Under 49 U.S.C. § 10502, however, the Board must exempt a transaction from regulation under Part A of Subtitle IV of Title 49 of the U.S. Code (including Sections 11323-11325) if the Board finds that: (1) regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101; and (2) either (a) the transaction is of limited scope or (b) regulation is not necessary to protect shippers from the abuse of market power.

In enacting the Staggers Rail Act of 1980, Congress made clear its intent that the Interstate Commerce Commission would use its expanded exemption authority under former Section 10505 to free certain transactions and service from the administrative and financial costs associated with continued regulation:

The policy underlying this provision is that while Congress has been able to identify broad areas of commerce where reduced regulation is clearly warranted, the Commission is more capable through the administrative process of examining specific regulatory provisions and practices not yet addressed by Congress to determine where they can be deregulated consistent with the policies of Congress. The conferees expect that, consistent with

the policies of this Act, the Commission will pursue partial and complete exemption from remaining regulation.

H.R. Conf. Rep. No. 1430, 96th Cong. 2d Sess. 105 (1980). Congress reaffirmed this policy in the conference report accompanying the ICC Termination Act of 1995,<sup>3</sup> which reenacted the existing exemption provisions as Section 10502. H.R. Conf. Rep. No. 422, 104th Cong. 1st Sess. 168-169 (1995).

An exemption from the requirements of Sections 11323-11325 for Pinsly's acquisition of control of WSR would be fully consistent with the standards set forth in Section 10502. Detailed scrutiny of the transaction, through an application for review and approval under Section 11323, is unnecessary to carry out the rail transportation policy of 49 U.S.C. § 10101. In fact, exemption from such review and approval would further several of the objectives established in the transportation policy. Moreover, the proposed transaction is of limited scope and will not result in any abuse of market power.

### **III. EXEMPTION CRITERIA**

#### **A. Regulation Is Not Necessary to Carry Out the Rail Transportation Policy Of 49 U.S.C. § 10101.**

Pinsly's acquisition of control of WSR is wholly consistent with the rail transportation policy outlined in 49 U.S.C. § 10101. The proposed transaction is strongly supported by WSR's current owner and sole shipper. See Exhibit B hereto. The transaction will bring to WSR the strengths and resources of an established short-line carrier operator, and will assure the preservation and viability of the local rail service currently provided by WSR. As such, exemption will promote the continuation of a sound rail system to meet the needs of the public. 49 U.S.C. § 10101(4). Pinsly's common control of WSR and AKMD will allow

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<sup>3</sup> Pub. L. No. 104-88, 109 Stat. 803 (1995).

coordination of the railroads' connecting operations, enhancing effective rail management and the economic benefits of WSR's service. Thus, this transaction also will promote efficiency, coordination among rail carriers and competition with other transport modes. See 49 U.S.C. §§ 10101(5) and (9).

Granting the relief sought herein will advance several other goals enumerated in the rail transportation policy as well. Section 10101 provides that the Board should minimize the need for federal regulatory control over the rail transportation system, reduce the barriers to entry into and exit from the rail transportation industry and provide for the expeditious resolution of all proceedings. 49 U.S.C. §§ 10101(2), (7) and (15). The statutory exemption contained in Section 10502 obviates the need for the expensive and time-consuming processes attendant to a proceeding under Sections 11323-11325. By limiting the level of regulatory review of this transaction and by relying upon the adequate and more expeditious exemption procedure, the Board would minimize the burden of unnecessary regulation on this transaction. E.g., Livonia, Avon & Lakeville Railroad Corporation -- Acquisition and Operation Exemption -- Line of Consolidated Rail Corporation, Finance Docket No. 32754 (STB served March 11, 1996) at 4. Other aspects of the rail transportation policy will not be adversely affected.

**B. Regulation Is Not Necessary to Protect Shippers From an Abuse of Market Power**

Pinsly's acquisition of control of WSR will have no adverse impact on competition. While WSR and AKMD connect at Warren, they do not serve any common industries. In addition, because all rail traffic currently handled by WSR is necessarily handled by AKMD as well, the common control of both carriers will not increase AKMD's market power or otherwise lessen competition or transportation options for the sole active shipper on WSR's line or for businesses that may locate on WSR in the future. Instead, WSR will simply be

incorporated into the Pinsly family of short-line carriers, and shippers potentially will benefit from greater efficiencies while receiving the same service. Genesee & Wyoming Inc. -- Control Exemption -- Georgia Southwestern Railroad, Inc., Finance Docket No. 35183 (STB served December 15, 2008) at 4 (no abuse of market power likely where no shipper located on a rail carrier's line "is expected to lose rail service options as a result of the control transaction.").<sup>4</sup> Accordingly, the transaction satisfies the market abuse standard set forth in 49 U.S.C. § 10502(a)(2)(B).

**C. The Transaction Is Limited in Scope**

Because regulation is not necessary to protect shippers from an abuse of market power, Pinsly need not demonstrate that the proposed transaction is of limited scope. 49 U.S.C. § 10502(a)(2); Finger Lakes Railway Corp. -- Control Exemption -- Ontario Central Railroad Corp., Finance Docket No. 35062 (STB served October 5, 2007) at 2. Nevertheless, it is clear that Pinsly's acquisition of WSR satisfies this criterion as well. The proposed transaction involves a change in control of a small, 5-mile long rail carrier in a single locale that currently serves a single shipper. That shipper, the carrier's current owner, supports the proposed transaction. Accordingly, the Board should find that this transaction is of limited scope within the meaning of Section 10502(a)(2)(A).

**IV. LABOR PROTECTION**

Under 49 U.S.C. § 10502(g), the Board may not exempt a rail carrier from otherwise applicable employee protection obligations. However, pursuant to 49 U.S.C.

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<sup>4</sup> But for the fact that the rail lines of WSR and AKMD connect at Warren, the proposed transaction would be subject to the class exemption for control of non-connecting carriers at 49 C.F.R. § 1180.2(d)(2). As indicated, however, the WSR-AKMD connection at Warren has no competitive significance, since all WSR traffic must be routed via AKMD regardless of whether WSR and AKMD are commonly controlled by Pinsly.



§ 11326(c), no employee protective conditions may be imposed on this transaction. WSR and all of Pinsly's existing railroad subsidiaries are Class III rail carriers.

## **V. ENVIRONMENTAL ASSESSMENT**

A petition for exemption must comply with the Board's environmental reporting requirements, if applicable. 49 C.F.R. § 1121.3(b). Under 49 C.F.R. § 1105.6(c)(2)(i), Pinsly's proposed acquisition of control of WSR is exempt from environmental reporting requirements. The proposed transaction will not result in significant changes in carrier operations, i.e., changes that exceed the thresholds of 49 C.F.R. § 1105.7(e)(4) or (5).

Under 49 C.F.R. § 1105.8(b)(3), the proposed acquisition of control of WSR by Pinsly also is exempt from historic preservation reporting requirements. Common control of WSR and Pinsly's existing rail carrier subsidiaries will not substantially change the level of maintenance of railroad property.

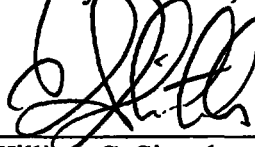
## **VI. EXPEDITED CONSIDERATION**

Concurrently with this petition for exemption, Pinsly is filing a notice of exemption pursuant to 49 C.F.R. § 1180.2(d)(2) in Finance Docket No. 35292, Pinsly Railroad Company -- Control Exemption -- The Prescott and Northwestern Railroad Company, to acquire control of The Prescott and Northwestern Railroad Company ("PNW"), another Class III rail carrier currently controlled by Potlatch. Unlike WSR, PNW does not connect with any of Pinsly's existing rail carrier subsidiaries, and thus Pinsly's acquisition of PNW can be accomplished under the class exemption procedure. Pinsly has entered into a single Stock Purchase Agreement with Potlatch covering both the PNW and WSR transactions, and hopes to acquire the stock of PNW and WSR simultaneously in a single closing by year-end.

Pinsly thus requests that the Board expedite its consideration of this petition and issue its decision approving the proposed acquisition of control of WSR to be effective on or before December 30, 2009. Pinsly's class exemption to acquire control of PNW will become effective on October 9, 2009, and an expedited decision in this matter would allow Pinsly to consummate both transactions by year-end and avoid the expense and burden of multiple closings. Potlatch, which is the sole active shipper on WSR, strongly supports both approval of the proposed transaction and the request for expedited consideration. See Exhibit B hereto.

WHEREFORE, Pinsly respectfully requests that the Board grant an exemption from the provisions of 49 U.S.C. §§ 11323-11325 for Pinsly's acquisition of control of WSR through stock purchase, and allow such exemption to become effective on or before December 30, 2009.

Respectfully submitted,

By: 

William C. Sippel  
Thomas J. Litwiler  
Fletcher & Sippel LLC  
29 North Wacker Drive  
Suite 920  
Chicago, Illinois 60606-2832  
(312) 252-1500

**ATTORNEYS FOR  
PINSLY RAILROAD COMPANY**

Dated: September 8, 2009

This map of Oklahoma displays the railroad network, with Union Pacific (UP) and BNSF lines being the most prominent. Station names are marked throughout the state, including major hubs like Oklahoma City (AKMD) and Tulsa (LRP4). The map also shows state boundaries and major rivers. A north arrow is located in the lower right corner.



September 8, 2009

Ms. Anne K. Quinlan  
Acting Secretary  
Surface Transportation Board  
395 E Street, S.W.  
Washington, DC 20024

Re: **Finance Docket No. 35293**  
**Pinsly Railroad Company – Control Exemption –**  
**Warren & Saline River Railroad Company**

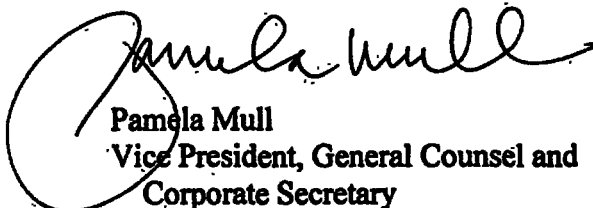
Dear Secretary Quinlan:

I am writing on behalf of Potlatch Land & Lumber, LLC ("Potlatch") to express Potlatch's strong support for the petition of Pinsly Railroad Company in the above-captioned proceeding, in which Pinsly seeks approval by exemption to acquire the Warren & Saline River Railroad Company ("WSR"). Potlatch is WSR's current owner, and believes that Pinsly's acquisition of the company will help assure the continuation of adequate rail service in our local area.

Potlatch also supports Pinsly's request for expedited consideration of this matter. The parties hope to close the proposed transaction by the end of 2009, concurrently with sale of another Potlatch rail carrier (The Prescott and Northwestern Railroad Company) to Pinsly. See Finance Docket No. 35292. Issuance of a decision in this proceeding to be effective by year-end will allow the efficient and timely completion of both transactions in a single closing.

Thank you for your consideration of Potlatch's position in this matter.

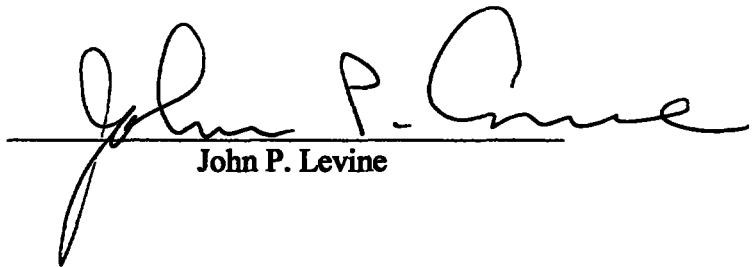
Respectfully submitted,

  
Pamela Mull  
Vice President, General Counsel and  
Corporate Secretary

**VERIFICATION**

Commonwealth of Massachusetts    )  
  ) ss:  
County of Hampden                            )

John P. Levine, being duly sworn, deposes and says that he is President of Pinsky Railroad Company, that he has read the foregoing Petition for Exemption and knows the facts asserted therein, and that the same are true as stated.

  
\_\_\_\_\_  
John P. Levine

SUBSCRIBED AND SWORN TO  
before me this 1<sup>st</sup> day  
of September, 2009.

  
\_\_\_\_\_  
Notary Public

My Commission expires: 2/28/2014